



Speech by

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MEMBER FOR KAWANA

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CRIMINAL CODE (ABUSIVE DOMESTIC RELATIONSHIP DEFENCE AND ANOTHER MATTER) AMENDMENT BILL

Mr BLEIJIE (Kawana—LNP) (5.13 pm): I rise to speak in general support of the Criminal Code (Abusive Domestic Relationship Defence and Another Matter) Amendment Bill. The bill will amend the Criminal Code by introducing a new partial defence to murder of killing in an abusive domestic relationship and a new offence of unlawfully possessing equipment.

Following a review by the Queensland Law Reform Commission into the excuse of accident and the defence of provocation, the commission made a recommendation to develop a separate defence for battered persons. Based on the commission's recommendation, the Department of Justice and Attorney-General, in conjunction with Professor Geraldine Mackenzie and Professor Eric Colvin from Bond University, carried out consultation on the development of this defence. This bill is a result of the review by the commission and that consultation.

The bill introduces a partial defence for victims in an abusive relationship of serious domestic violence who unlawfully kill their abuser. The partial defence means that, where a domestic violence victim unlawfully kills their abuser, which would normally constitute murder upon such conviction, that person will instead be guilty only of manslaughter. Although this is only a partial defence, it recognises the effect of ongoing continuous violence on those victims in an abusive relationship, particularly in the case where the defence of accident or provocation may not be available to a charge of murder. This partial defence does not excuse victims from taking the law into their own hands, but it will provide victims of serious abuse with some legal protection and expand the court's scope for sentencing.

Under this bill, the killing in an abusive domestic relationship defence will be available where the accused has suffered serious domestic violence in an abusive domestic relationship, the deceased had committed acts of serious domestic violence against the accused in the course of that relationship, the accused believed at the time of the killing that their action was necessary to avert their own death or grievous bodily harm and, having regard to the abusive relationship and in all the circumstances, there were reasonable grounds for that belief. This bill is the first time that we have seen in Australia the defence of abusive domestic relationship.

The underlying principles of the justice system in Queensland are to serve and protect an individual's liberties and safety in a free and democratic society. Every Queenslanders has equal rights under the Queensland justice system. Unfortunately, the victims of serious domestic violence who have been in such abusive relationships may not believe that that is the case—that the Queensland justice system is available to them or provides them with any protection at all from their abuser. They may also believe that they do not have access to the same fundamental human rights that each and every Queenslanders has. They may not even have the right to sit at their own table, eat with their family or even sleep in their own bed. Sometimes these victims who are full of fear and desperation do not believe, however wrong that belief may be, that they have any other way out of their situation apart from killing their abuser for self-preservation.

Currently, under the Queensland Criminal Code the offence of murder carries a mandatory sentence of life imprisonment and the court has no discretion to reduce that sentence. There are certain defences to murder, such as self-defence and provocation, but because of the elements that must be established for these defences they may not be available to many victims of serious domestic violence and abuse who kill their abusers. In those cases, those defendants who are found guilty of murder face a mandatory sentence of life imprisonment and the court has limited discretion as to the reduction of that sentence. A penalty of a mandatory sentence for life imprisonment would be grossly unjust to those victims of seriously abusive relationships who kill their abusers. A defence of killing in an abusive domestic relationship will mean that these defendants will be guilty of manslaughter rather than murder. Although the crime of manslaughter carries a maximum sentence of life imprisonment, the court generally has discretion to mitigate the punishment and reduce that sentence.

It is a very sad day in Queensland—or anywhere in Australia—when you have to debate this particular type of legislation, not because this legislation will provide the protection to the victims of domestic violence but because domestic violence of any kind occurs in the first instance. It is tragic that domestic violence exists in today's society and that there are people, even today as we are debating this bill, who are suffering from violence at the hands of their abusers—abusers who they perhaps know and who are family members.

I draw the attention of the House to the Australian Bureau of Statistics report titled *Recorded crime—victims, Australia, 2008*. The report states that, in 2008, of the 19,423 victims of assault recorded by Queensland, nearly half—49 per cent—of the victims knew their offender and that seven per cent of the victims of assault, that is 1,268, reported the offender to be a current partner. The report goes on to say that in the same year there were 4,440 sexual assault victims and that of those 4,440 sexual assault victims 64 per cent, or 2,847 victims, knew the offender. Of that number, three per cent of the offenders were the victim's partner. For another 444 of those sexual assault victims—that is nine per cent—the offender was another family member.

Domestic and family violence does not discriminate and can occur in all families regardless of their cultural backgrounds, religious beliefs, sexual preferences, age, gender or social status. As legislators, we need to act responsibly to ensure that these victims of any such crime are recognised. The circumstances that domestic violence victims are forced to endure need to be considered in response to certain retaliatory crimes that they may commit. The law should have room to consider extreme cases such as murder, where the extenuating circumstances which may have provoked any such act need to be taken into consideration.

This piece of legislation needs to strike a balance between protecting the victims of serious domestic violence who kill their abusers and not empowering individuals to take the law into their own hands. We need to ensure that this defence is not misused by unmeritorious defendants but rather that it is kept for those who are genuine victims of serious domestic abuse who have a legitimate claim to this defence.

The onus of proof will be on the Crown to disprove this defence beyond reasonable doubt. However, the bill does not allow for expert witnesses, such as domestic violence support workers, to be called upon where an accused raises this defence. I note that the bill does include certain safeguards to ensure the defence is not misused by those seeking to take advantage of it and that it will not be used as a loophole. This is something that will need to be monitored closely.

The second part of this bill relates to identity theft. The bill introduces the offence of unlawfully possessing equipment used to obtain or make identification information. The Criminal Code sets out offences relating to fraud, theft and forgery including the offence of obtaining or dealing with identification information. However, the Criminal Code does not currently deal with the possession of equipment necessary to commit identity theft. The second part of the bill seeks to remedy this.

The first national survey of personal fraud in Australia, the Australian Bureau of Statistics Personal Fraud Survey of 2007, revealed that over 800,000 Australians were victims of personal fraud in the previous 12 months. At least 499,500 Australians were victims of identity theft or identity fraud. Of these, 124,000 experienced identity theft as a result of the unauthorised use of their personal details including driver's licence, tax file number and passport. There were 383,300 Australians who were victims of credit or bank card fraud. Late last year I met with one of my constituents who unfortunately was the victim of identity theft. With the convenience of credit card purchases over the internet and the ease of access to information, many people are not aware of the risk of identity theft. It is unfortunate that with modern technology and the lack of awareness within certain groups in our society identity theft is a crime that is becoming more prevalent.

I would like to place on the parliamentary record the top work of one of our local volunteers, Ms Marion Costin, who, through the various Neighbourhood Watch groups in my electorate, continues to

help educate the public on the endangerment of identity fraud and how prevalent it is in our society. Marion met with me and gave me a printed document titled *Identity theft: Don't let it happen to you*. It was based on her own initiative. She worked with the local police and prepared a one-page document highlighting important do's and don'ts.

While I support this section of the bill, I, along with other members of the opposition, have grave concerns about the maximum penalty of a mere three years imprisonment when an offence relating to instruments and materials for forgery carries a maximum penalty of 14 years imprisonment. It is a shame that as a society we have to resort to our community volunteers preparing fact sheets, but unfortunately socialist governments for many years have been so soft on crime, therefore allowing the criminals to spread their wings and networks without fear of consequence. Certainly identity fraud falls into that category. The maximum penalty of three years imprisonment for the offence of unlawfully possessing equipment used to obtain or make identification information should be increased.

If the Bligh Labor government were serious about cracking down on identity theft it would treat the offence considered by this bill as seriously as the offence relating to instruments and materials for forgery. I support this bill with the issues that I have raised. As legislators we need to take a tough stance against all forms of domestic violence and abuse as well as all acts of identity theft. I commend the bill to the House.